
Appeal Decision

Site visit made on 13 February 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15TH FEBRUARY 2023

Appeal A: APP/W0734/C/22/3308690

Appeal B: APP/W0734/C/22/3308691

Land at 12 Levington Wynd, Middlesbrough TS7 0QD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Jonathan Bowden and Appeal B by Mrs Deborah Bowden against an enforcement notice issued by Middlesbrough Borough Council.
 - The enforcement notice was issued on 13 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, there has been a ground floor extension of garage and hall to front and first floor extension above garage.
 - The requirements of the notice are to remove the unauthorised ground floor extension of garage and hall to front and first floor extension above garage.
 - The period for compliance with the requirements is 12 weeks.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended and Appeal B is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Appeal A: APP/W0734/C/22/3308690

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/W0734/C/22/3308691

2. The appeal is dismissed and the enforcement notice is upheld.

Reasons

Ground (a) appeal and the deemed planning application

3. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the enforcement notice and also note that an appeal was decided on 8 October 2021 under s.78 of the Act in respect of a refusal of planning permission for the same development¹. The latter is a

¹ APP/W0734/D/21/3272477

material consideration of significant weight in respect of the determination of this appeal. The main issues are the effect of the development on the character and appearance of the area and the living conditions of the occupiers of No. 10 Levington Wynd in respect of outlook and privacy.

Character and appearance

4. As part of my site visit, I was able to observe the pattern of development in this part of Levington Wynd. Other than No. 10 Levington Wynd, which is set well back from the main road, the other detached dwellings follow a broadly consistent building line and have a similar design including a two-storey gable frontage running away from the street, single storey garages to the side and small porches to the front. The front amenity spaces are generally open and include driveways and landscaping. These attributes add positively and distinctively to the character and appearance of the immediate area.
5. As was concluded by the Inspector who considered the appeal made under s.78 of the Act, I also find that owing to the scale and position of the front extension it has an unacceptably dominating and imposing impact when seen from the main road. Furthermore, the extensions as a whole have added significant bulk and massing to the dwellinghouse and do not appear subordinate in scale. Overall, the extensions detract materially from the otherwise established design of the vast majority of houses in this part of Levington Wynd and appear incongruous in the street-scene.
6. The appellant has referred me to examples of other extensions in the wider housing estate and considers that this justifies allowing the development. I have determined this appeal on its individual planning merits and against up to date planning policy. In any event, the examples referred to by the appellant cannot reasonably be said to be similar to the appeal development. The examples either do not include two storey forward projections, are smaller overall and/or pre-date the latest planning policies. Furthermore, a number of the examples relate to different parts of the housing estate and hence are not seen in the same context as the appeal site. The examples of other extensions do not therefore alter or outweigh my conclusion on this main issue.
7. For the above reasons, I find that the development as a whole causes significant harm to the character and appearance of the area. Therefore, I conclude that it does not accord with the design, character and appearance requirements of policies DC1 and CS5 of the Middlesbrough Local Development Framework Core Strategy 2008 (CS), Middlesbrough's Urban Design SPD 2013 and Nunthorpe Design Statement SPD 2011.

Living Conditions

8. While the two storey projecting front extension causes harm to the character and appearance of the area, I agree with the previous Inspector that no material harm has been caused to the occupiers of No. 10 Levington Wynd in respect of outlook and privacy.
9. While there are ground and first floor windows in the side elevation facing the front garden of No. 10 Levington Wynd, I am satisfied that any actual or perceived loss of privacy for the occupants of this neighbouring property could be suitably addressed by requiring such windows to be permanently fitted with opaque glass by means of the imposition of a planning condition. This would be

acceptable as the evidence is that these windows would not relate to habitable rooms.

10. Subject to conditional control, I find that the development would not cause any significant harm to the living conditions of the occupiers of No. 10 Levington Wynd in respect of outlook and privacy. Therefore, the development is capable of according with the amenity requirements of policy DC1 of the CS.

Ground (a) conclusion

11. While the development would be acceptable in respect of the living conditions of the occupiers of No 10 Levington Wynd, significant harm has nonetheless been caused to the character and appearance of the area. The development does not therefore accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Ground (f) appeals

12. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
13. The purpose of the notice is to remedy the breach of planning control. The notice requires the removal of the unauthorised development. This is not an excessive requirement as it remedies the breach of planning control. The appellant states that they are willing to '*consider a variety of plans...to differentiate between the original property and the extension*' and that '*discussions so far have led to the LPA stating that keeping the side extension and demolishing all but a 0.5m ground floor extension to the front of the property would be acceptable to them*'.
14. The Council provide no comment in respect of the potential for an alternative form of development at the site. Furthermore, I have not been provided with any detailed drawings, to be considered as part of the ground (a) appeal, which would enable me to consider and control the retention of part of the matters in the breach of planning control.
15. For the collective reasons outlined above, I therefore conclude that the steps required by the notice are not excessive in terms of remedying the breach of planning control. Therefore, the ground (f) appeals fail.

Conclusions

Appeal A: APP/W0734/C/22/3308690

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B: APP/W0734/C/22/3308691

17. For the reasons given above, I conclude that the appeal should not succeed.

D Hartley

INSPECTOR